UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC

Flightline Aviation, Inc. Complainant	)	
v.	)	Docket No. 16-07-05
City of Shreveport through the Shreveport Airport Authority Respondents	)	

DIRECTOR'S DETERMINIATION

I. INTRODUCTION

This matter is before the Federal Aviation Administration (FAA) based on a formal complaint filed in accordance with the *Rules of Practice for Federally-Assisted Airport Proceedings*, Title 14 Code of Federal Regulations (CFR) Part 16.

Flightline Aviation, Inc. (Complainant) has filed a formal complaint pursuant to 14 CFR Part 16 against the City of Shreveport and the Shreveport Airport Authority, owner and operator of the Shreveport Downtown Airport (Airport).

Complainant alleges[1] that Respondent violated provisions of the surplus property conveyance and Grant Assurance 22, *Economic Nondiscrimination*, when Respondent engaged in disparate treatment, failed to equally enforce provisions of the Airport Minimum Standards[2], and terminated Complainant's operating agreement.

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[1] Complainant has not alleged a specific violation of the surplus property conveyance or Grant Assurances. However, FAA has construed language in the Complaint including "unequal and disparate treatment" as an alleged violation of the surplus property conveyance and Grant Assurance 22, *Economic Nondiscrimination*.

[2] The Airport's Minimum Standards at issue in this Complaint, from this point forward, are referred to as the 'Amended Minimum Standards.' They are different from those referenced in a separate Part 16 complaint and determination for this Airport. [*See* Royal Air, Inc. v. City of Shreveport through the Shreveport Airport Authority, FAA Docket No. 16-02-06, Director's Determination (January 9, 2004) & FAA Exhibit 1, Item 5, exhibit 2.]

As discussed below, based on the record herein and relevant law and policy, FAA finds that the Respondent is not currently in violation of its Federal obligations under the grant assurances.[3]

II. COMPLAINANT

Complainant is Flightline Aviation, Inc., a fixed-base operator[4] that leased facilities at the Shreveport Downtown Airport to sell fuel, operate a flight school, provide aircraft rental and sales, and conduct general aviation maintenance. [FAA Exhibit 1, Item 1, pg. 1.]

III. AIRPORT

Shreveport Downtown Airport (Airport) is a public-use airport owned by the City of Shreveport and operated by the Shreveport Airport Authority.[5] The Airport, located 3 nautical miles north of Shreveport, Louisiana, is classified as a reliever airport with 125 based aircraft and 58,608 annual operations.[6]

The Airport has two runways, Runway 05/23, a 3,200 foot long by 75 foot wide asphalt runway, and Runway 14/32, a 5,018 foot long by 150 foot wide asphalt runway.

The Shreveport Downtown Airport was deeded to the City of Shreveport in 1949 by the United States, through the War Assets Administrator, pursuant to Reorganization Plan 1 of 1947 (12 F.R. 4534) and the powers and authority of the Surplus Property Act of 1944, as amended. Consequently, the City of Shreveport has nondiscriminatory obligations as stated in the surplus property conveyance documents.[7] [*See* Royal Air, Inc., v. City of Shreveport through the Shreveport Airport Authority, FAA Docket No. 16-02-06, Director's Determination (January 9, 2004), pg. 4.]

In addition, the planning and development of the Shreveport Downtown Airport has been financed, in part, with funds provided by the FAA under the Airport Improvement Program (AIP), authorized by 49 U.S.C. § 47101, et seq. The Shreveport Airport Authority has entered into numerous AIP grant agreements with the FAA since 1982. The Respondent has received a total of $7,814,510 through fiscal year 2007 in Federal

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[3] FAA Exhibit 1 contains the Index of Administrative Record.

[4] A fixed-base operator (FBO) is a commercial entity, providing aeronautical services, such as maintenance, storage, ground and flight instruction, etc. to the public. [FAA Order 5190.6A, *Airport Compliance Requirements*, Appendix 5.]

[5] FAA Form 5010 "Airport Master Record" for Shreveport Downtown Airport, Date: 9/5/07.

[6] FAA Form 5010 "Airport Master Record" for Shreveport Downtown Airport, Date: 9/5/07 and FAA National Plan of Integrated Airport Systems (NPIAS), 2007-2011, Appendix A, pg. 45.

[7] The obligations regarding no unjust discrimination under the surplus property conveyance nearly mimic Federal Grant Assurance 22, *Economic Nondiscrimination*, under the Airport Improvement Program grant agreements. For example, the surplus property conveyance in this case provides in part "any [transferred] interest shall be used for public airport purposes for the use and benefit of the public." Therefore, the analysis under economic discrimination will also cover any Surplus Property Act violation.

airport development assistance directly from the FAA for the Shreveport Airport Authority.

IV. BACKGROUND

On June 17, 2004, Respondent approved a request by Mr. Jeffery Boyd to operate as a full service fixed-base operator with an initial proposed FBO Agreement term of two years.[8] [9] [FAA Exhibit 1, Item 5, exhibit 6.]

By letter to Respondent dated September 15, 2004, Complainant requested a change in FBO Agreement term from two years to five years with an option to extend the FBO Agreement for five years. [FAA Exhibit 1 Item 5, exhibit 6.]

During the September 16, 2004 Authority Board meeting, Respondent approved Complainant's September 15, 2004 request for a change in lease terms. [FAA Exhibit 1, Item 5, exhibit 7.]

On October 21, 2004, Complainant entered into an FBO Agreement with Respondent for a five year FBO Agreement term with an option to extend the FBO Agreement another five years. [FAA Exhibit 1, Item 5, exhibit 9.]

In letters dated November 17, 2004, Respondent notified Complainant and Complainant's competitor, Royal Air that *"the Shreveport Downtown Airport Minimum Standards [Amended Minimum Standards][10] require that fixed base operators engaged in providing fuel sales at the Shreveport Regional and Downtown Airports must maintain Pollution Legal Liability Insurance."* Cited from the Schedule of Minimum Insurance Requirements, *"Contractor shall maintain pollution legal liability insurance to protect from bodily injury and property damage with a minimum combined single limit of $1,000,000 per occurrence."*[11] Complainant and Royal Air were given until December 1, 2004 to provide proof of Pollution Legal Liability Insurance or *"other financial means*

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[8] At some point between June 17, 2004 and September 15, 2004, Respondent denied Mr. Boyd the ability to serve as an applicant individually, instead permitting Flightline Aviation, Inc. to serve as an applicant. [*See* FAA Exhibit 1, Item 5, pg. 4.] Respondent states *"Mr. Jeffrey M. Boyd has represented himself to the SAA to be the President of Flightline and is listed as such on the website of the Louisiana Secretary of State."* [FAA Exhibit 1, Item 5, pg. 2.] Respondent adds, *"when application was actually made, it was made by Flightline."* [FAA Exhibit 1, Item 5, pg. 5.]

[9] The FBO Agreement appears to be both an operating agreement and an agreement that permits the use of certain premises on the Airport. Flightline Aviation also subleases facilities from other airport tenants to meet the space requirements for operating on the Airport. [FAA Exhibit 1, Item 5, exhibit 8.]

[10] See Footnote 1 supra.

[11] Respondent states that it *"experienced great resistance from Royal Air regarding its obtaining certain insurance coverages, particularly Environmental Impairment/Pollution Liability Insurance."* [FAA Exhibit 1, Item 5, exhibit 18, #12.] Royal Air claimed the coverage was not available. [FAA Exhibit 1, Item 5, exhibit 18, #13.] Therefore, on October 21, 2004, Respondent *"agreed to modify the Environmental Impairment Liability Insurance requirement so that a less expensive coverage was specified, namely, Pollution Legal Liability Insurance."* [id.]

acceptable to the City Risk Manager and the Shreveport Airport Authority." [FAA Exhibit 1, Item 5, exhibit 12 & Item 1, exhibit 7.]

By letter dated December 1, 2004, Respondent provided Complainant and Royal Air an additional 15 days to comply with the Amended Minimum Standards regarding Pollution Legal Liability Insurance. [FAA Exhibit 1, Item 5, exhibit 13 & Item 1, exhibit 8.]

On December 16, 2004, Respondent extended the time for Royal Air to provide proof of Pollution Legal Liability Insurance until December 31, 2004. [FAA Exhibit 1, Item 5, exhibit 18, #16.]

Due to Royal Air's failure to provide proof of Pollution Legal Liability Insurance coverage, on December 30, 2004, Respondent advised Royal Air that *"the deadline for obtaining Pollution Legal Liability Insurance coverage would not be extended" and that if Royal Air failed to obtain coverage it must cease and desist fueling operations."* [FAA Exhibit 1, Item 5, exhibit 18, #17.]

On December 31, 2004, Respondent ordered Royal Air *"to immediately cease use of the fuel farm and sales of any fuel."* [FAA Exhibit 1, Item 5, exhibit 18, #18 & Item 1, exhibit 9.]

During the January 20, 2005 Authority Board meeting, Royal Air commented that it could not obtain Pollution Legal Liability Insurance because of problems with certain tanks in the Airport's Fuel Farm. Further, Royal Air alleged Complainant was not meeting requirements of the Amended Minimum Standards such as minimum amount of leased space and fuel distribution. [FAA Exhibit 1, Item 5, exhibit 10.] Respondent decided to give Complainant an additional forty-five days to come into compliance with the Amended Minimum Standards requirement for a fuel tank in the Airport fuel farm. [FAA Exhibit 1, Item 5, pg. 7.]

By letter dated February 28, 2005, Royal Air notified Respondent that it decided to self-insure against the Pollution Legal Liability Insurance requirement. Royal Air stated it *"consistently maintains cash and other liquid assets in excess of $1,000,000 that would be available to satisfy any pollution related losses incurred by Royal Air as part of its fueling operations."*[12] [FAA Exhibit 1, Item 1, exhibit 11.]

On March 1, 2005, Respondent filed a Petition for Temporary Restraining Order and Injunctive Relief against Royal Air to cease its fueling services. [FAA Exhibit 1, Item 5, exhibit 18, #19.] However, Respondent *"became aware that notice required under the FBO Agreement had not been properly given for termination of or suspension of the rights of Royal Air to provide fueling services at the Shreveport Downtown Airport."* [FAA Exhibit 1, Item 5, exhibit 18, #20.] Therefore, Respondent chose to give Royal Air and additional thirty days to provide proof of required insurance coverage and other

[12] Respondent did not accept Royal Air's decision to self-insure as an acceptable means of compliance with the Amended Minimum Standards. [*See* FAA Exhibit 1, Item 1, exhibit 13.]

coverages under the FBO Agreement and Amended Minimum Standards. [FAA Exhibit 1, Item 5, exhibit 18, #21.]

In letters dated April 15, 2005, Respondent notified Complainant and Royal Air that their FBO Agreements with the Authority would be terminated within thirty days of receipt of the letter because they had *"not performed or complied with [certain] terms, covenants, and conditions of the FBO Agreement..."* [FAA Exhibit 1, Item 5, exhibits 14 & 15.]

- With regard to Complainant, Respondent stated Complainant was not in compliance with Section 10 of the Amended Minimum Standards regarding insurance and that Complainant must provide certified copies of insurance policies evidencing the required coverages for Workers Compensation and Employer's Liability, Commercial General Liability, Aircraft Liability, Business Automobile Liability, All Risk Property Insurance, Hangarkeepers Liability, Hangarkeepers Legal Liability, and Pollution Legal Liability insurance. In addition, Respondent stated Complainant was not in compliance with the Amended Minimum Standards regarding minimum leased hangar space and fueling operation requirements for fuel storage locations, equipment, and facilities.
- With regard to Royal Air, Respondent claimed Royal Air was also not in compliance with Section 10 of the Amended Minimum Standards which required certain coverage including Workers Compensation and Employer's Liability, Commercial General Liability, Aircraft Liability, Business Automobile Liability, All Risk Property Insurance, Hangarkeepers Liability, Hangarkeepers Legal Liability, and Pollution Legal Liability insurance. Additionally, Respondent claimed that in order for Royal Air to comply with Amended Minimum Standards regarding compliance *"...with all Federal, State, and local laws, rules and regulations, including, without limitation, all environmental laws and regulation..."* Royal Air must remediate the contaminated soil at the Airport's Fuel Farm where it formerly had a 250 gallon aboveground storage tank containing diesel fuel. [FAA Exhibit 1, Item 5, exhibit 14.]

On April 19, 2005, Complainant entered into a sublease which provided fuel tanks required for compliance with the Amended Minimum Standards. [FAA Exhibit 1, Item 5, pg. 7.] Respondent states *"that lease agreement included two Jet A fuel tanks, 6,000 gallons each, located at the Fuel Farm at [the Airport] and a 12,000 gallon underground tank on Lot 19."* [id.]

By letter dated May 4, 2005, Royal Air requested *"a continuance on the variance"* for certain minimum standards including those regarding Business Automobile Liability Insurance and All Risk Property Insurance.[13] Additionally, Royal Air requested a new

[13] Based on Royal Air's request for a "continuance", it appears that Respondent had granted Royal Air a variance from certain minimum standards sometime before April 15, 2005. However, there is no information in the Record whether Respondent had, in fact, granted Royal Air a variance, and if so, to which minimum standards.

variance from the Hangarkeepers Liability and Legal Liability Insurance requirements. [FAA Exhibit 1, Item 5, exhibit 25 & Item 1, exhibit 18.]

On May 6, 2005, Respondent rejected Royal Air's May 4, 2005 request for a continuance of variances regarding Business Automobile Liability Insurance and All Risk Property Insurances and rejected Royal Air's request for a variance from the Hangarkeepers Liability and Legal Liability Insurance requirements. [FAA Exhibit 1, Item 5, exhibit 26.] Respondent affirmed its April 15, 2005 request that Royal Air provide evidence of its compliance with the Amended Minimum Standards within thirty days from the date of receipt. [id.]

At some point after May 6, 2005, Royal Air obtained a one year policy (May 15, 2005 – May 15, 2006) for Pollution Legal Liability Insurance. [FAA Exhibit 1, Item 5, exhibit 19.]

In a June 8, 2005 letter to Respondent, Royal Air alleged Respondent had not equally enforced the Amended Minimum Standards since Complainant had not responded to the April 15, 2005 letter to comply with the Amended Minimum Standards. Royal Air sought termination of Complainant's FBO Agreement. [FAA Exhibit 1, Item 1, exhibit 10.]

In a June 22, 2005 Inter-Office Memorandum, Respondent's Risk Manager determined that Complainant *"has provided insurance coverage that is in compliance with the minimum standards for Downtown Airport, as amended, at this time."* He further states that "*Royal Air Inc., has provided insurance coverage that does not comply with the minimum standards for Downtown Airport, as amended, at this time."* [FAA Exhibit 1, Item 1, exhibit 13.]

During the June 23, 2005 Authority Board meeting, Respondent decided to *"immediately terminate Royal Air's FBO Lease Agreement and any right to operate as an FBO based on failure to comply with the FBO Lease Agreement and the [Amended] Minimum Standards after the Shreveport Airport Authority required by written notice dated April 15, 2005, to come into compliance."* [FAA Exhibit 1, Item 5, exhibit 16.]

By letter dated June 23, 2005, Respondent notified Royal Air that it was immediately terminating Royal Air's FBO Agreement and privileges as a FBO at the Airport. The letter advised that *"this letter is your notice to immediately (upon receipt of this letter) cease and desist all Fixed Base Operator activities."* [FAA Exhibit 1, Item 5, exhibit 17.] Respondent states *"Royal Air ignored the order of SAA."* [FAA Exhibit 1, Item 5, exhibit 18, item 36.]

On June 29, 2005, Respondent refiled its Petition for Temporary Restraining Order and Injunctive Relief in the First Judicial District Court of Caddo Parish, Louisiana against Royal Air to cease and desist FBO operations at the Airport.

In an October 24, 2005 letter, Respondent notified Complainant that according to it's records, two of Complainant's required insurance policies had expired (effective October 4, 2005 and October 15, 2005). Complainant was required to *"provide a certified copy of the replacement policy...immediately."* [FAA Exhibit 1, Item 5, exhibit 20.]

On November 2, 2005, Respondent reminded Complainant that it still had not received a response to its October 24, 2005 letter notifying it that two of Complainant's required insurance policies had expired. [FAA Exhibit 1, Item 5, exhibit 20.]

Respondent states Complainant *"was not fully in compliance with the [Amended] Minimum Standards"* on August 16, 2006. [FAA Exhibit 1, Item 5, pg. 6.] Specifically, Complainant was in violation of the Amended Minimum Standards requirements regarding, among other things, employed aircraft mechanics, specific information in the subleases required for FBO operations (i.e. lease rate), and employed flight instructors. [id.]

By letter dated February 27, 2007, Respondent stated:

> *"The Shreveport Airport Authority ("SAA") has given Flightline Aviation, Inc. ("Flightline") many opportunities to come into compliance with the Shreveport [Amended] Minimum Standards ("Minimum Standards") and with the Fixed Base Operator Agreement dated October 21, 2004 ("FBO Agreement").*
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> *At its meeting on February 15, 2007, the SAA considered information regarding default by Flightline under the FBO Agreement and the Minimum Standards and agreed to give Flightline the time required under the FBO Agreement and the Minimum Standards to cure existing defaults. Additionally, the SAA determined at that meeting to advise Flightline that failure to cure the defaults listed in this letter and the occurrence of any additional defaults will result in termination of Flightline's right to operate as a Fixed Base Operator (FBO) at the Shreveport Downtown Airport based, among other things, on Flightline's repeated failure to comply with the [Amended] Minimum Standards and the FBO Agreement."* [FAA Exhibit 1, Item 5, exhibit 21 and Item 1, exhibit 17.]

Flightline was given thirty days from receipt of the letter[14] to provide proof of its cure of defaults and to comply with certain requirements under the Amended Minimum Standards including:

- Failure to provide a certificate evidencing that insurance is in force and effect and a copy of the policy for required coverage including Commercial General Liability, Workers Compensation and Employers Liability, Independent Contractors Coverage (if applicable), Business Automobile Liability (including but not limited to owned, non-owned, and hired vehicles), All Risk Property Insurance, Pollution Legal Liability,

[14] Thirty days from receipt of the letter was on or about March 27, 2007.

Trucker's Liability Hangarkeepers Liability, Aircraft Liability, and Hangarkeepers Legal Liability.

- Failure to provide documentation from February 2006 through February 2007 regarding fuel flowage fees
- Failure to provide proof of employment of FAA-certified airframe and power plan mechanics whose sole responsibility is repair.
- Failure to provide certain space for flight instruction/rental such as an office, classroom, and briefing room space.
- Failure to list certain information including rent in subleases required for FBO operations.
- Failure to provide Respondent with a copy of Complainant's current fuel supply contract. [id.]

By letter dated April 17, 2007, Respondent notified Complainant that it *"has not come into compliance with the [Amended] Minimum Standards or its FBO Agreement"* and to *"please cease operations as a Fixed Base Operator at Shreveport Downtown Airport by 5 p.m. CDT, April 17, 2007."* [FAA Exhibit 1, Item 5, exhibit 22 & Item 1, exhibit 15.] Respondent revoked Complainant's right to operate as an FBO at the Airport. Among other things, Complainant had failed to comply with certain requirements of the Amended Minimum Standards including:

- No certificate or other proof of Business Automobile Liability Insurance for non-owned and hired vehicles.
- Insurance policy coverage that either does not include the City as an additional insured or fails to include language in the policy required by Respondent.
- Subleases for FBO operations do not include detailed contract terms, conditions, rentals, fees, or charges.
- No rent or fuel flowage fees paid for February and March 2007. [id.]

Respondent also demanded Complainant's rent due for the months of March and April 2007 and fuel flowage fees due for February and March 2007. [id.]

By letter dated June 27, 2007, Respondent demanded Complainant immediately provide its due fuel flowage reports and *"to pay all sums due as flowage fees."* [FAA Exhibit 1, Item 5, exhibit 23.] Complainant had not submitted the required reports since it had begun dispensing fuel over a year before the letter. In addition, Respondent demanded rent due with interest, totaling $6,445.60. [id.] Respondent stated:

> *"In the event that you do not pay these sums in full, including interest within thirty (30) days from the date of this letter, the City will declare the Office Space Lease Agreement (reconducted to month-to-month lease) terminated."* [id.]

Procedural Background

On May 14, 2007, FAA received the Complaint. [FAA Exhibit 1, Item 1.]

On May 24, 2007, FAA docketed Flightline Aviation, Inc., v. Shreveport Airport Authority, FAA Docket No. 16-07-05. [FAA Exhibit 1, Item 2.]

On July 19, 2007, Respondent filed its Answer in Flightline Aviation Inc., v. Shreveport Airport Authority, FAA Docket No. 16-07-05.[15] [FAA Exhibit 1, Item 4.]

On August 23, 2007, FAA received Complainant's Reply to Flightline Aviation, Inc., v. Shreveport Airport Authority, FAA Docket No. 16-07-05. [FAA Exhibit 1, Item 9.]

On August 31, 2007, FAA received Respondent's Rebuttal to Flightline Aviation Inc., v. Shreveport Airport Authority, FAA Docket No. 16-07-05. [FAA Exhibit 1, Item 10.]

V. ISSUES

The issues upon examination are:

- Whether Respondent engaged in disparate treatment in violation of Grant Assurance 22, *Economic Nondiscrimination*[16], by scrutinizing Complainant's financial status, deferring its application for an FBO agreement, and requiring a personal guaranty agreement of Flightline's President, a non-owner employee of the company?
- Whether Respondent failed to equally enforce insurance provisions required by the Amended Minimum Standards upon all FBOs on the Airport, in violation of Grant Assurance 22, *Economic Nondiscrimination*?
- Whether Respondent violated Grant Assurance 22, *Economic Nondiscrimination*, by terminating Complainant's FBO Agreement?

VI. APPLICABLE LAW AND POLICY

The following is a discussion pertaining to (a) the FAA's enforcement responsibilities; (b) the FAA compliance program; (c) statutes, sponsor assurances, and relevant policies; and (d) the complaint process.

FAA Enforcement Responsibilities

The Federal Aviation Act of 1958, as amended (FAAact), 49 U.S.C. § 40101, et seq., assigns the FAA Administrator broad responsibilities for the regulation of air commerce in the interests of safety, security, and development of civil aeronautics. The federal role in encouraging and developing civil aviation has been augmented by various legislative actions, which authorize programs for providing funds and other assistance to local

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[15] Respondent's filing is considered timely because FAA granted Respondent's Motion for Extension of Time. [FAA Exhibit 1, Item 4.]

[16] Here, the complainant does not specifically allege a violation of the surplus property conveyance or Grant Assurance 22. However, allegations of discrimination such as Complainant's are also covered under the Surplus Property Act. See Footnote 7 supra.

communities for the development of airport facilities. In each such program, the airport owner or sponsor assumes certain obligations, either by contract or by restrictive covenants in property deeds and conveyance instruments, to maintain and operate its airport facilities safely, efficiently, and in accordance with specified conditions. Commitments assumed by airport owners or sponsors in property conveyance or grant agreements are important factors in maintaining a high degree of safety and efficiency in airport design, construction, operation and maintenance, as well as ensuring the public reasonable access to the airport. Pursuant to 49 U.S.C. § 47122, the FAA has a statutory mandate to ensure that airport owners comply with their Federal grant assurances.

FAA Airport Compliance Program

The FAA discharges its responsibilities for ensuring airport owners' compliance with their federal obligations through its Airport Compliance Program. The FAA's airport compliance efforts are based on the contractual obligations an airport owner accepts when receiving federal grant funds or the transfer of federal property for airport purposes. These obligations are incorporated in grant agreements and instruments of conveyance in order to protect the public's interest in civil aviation and to ensure compliance with federal laws.

The FAA Airport Compliance Program is designed to ensure the availability of a national system of safe and properly maintained public-use airports operated in a manner consistent with the airport owners' federal obligations and the public's investment in civil aviation.

The Airport Compliance Program does not control or direct the operation of airports. Rather, it monitors the administration of the valuable rights pledged by airport sponsors to the people of the United States in exchange for monetary grants and donations of federal property to ensure that the public interest is being served. FAA Order 5190.6A, *Airport Compliance Requirements*, sets forth policies and procedures for the FAA Airport Compliance Program. FAA Order 5190.6A is not regulatory and is not controlling with regard to airport sponsor conduct. Rather, it establishes the policies and procedures to be followed by FAA personnel in carrying out the FAA's responsibilities for ensuring airport compliance. It provides basic guidance for FAA personnel in interpreting and administering the various continuing commitments made to the United States by airport owners as a condition of receiving a grant of federal funds or the conveyance of federal property for airport purposes. FAA Order 5190.6A analyzes the various obligations set forth in the standard airport sponsor assurances, addresses the nature of those assurances, addresses the application of those assurances in the operation of public-use airports, and facilitates interpretation of the assurances by FAA personnel.

The FAA Compliance program is designed to achieve voluntary compliance with federal obligations accepted by owners and/or operators of public-use airports developed with FAA-administered assistance. Therefore, in addressing allegations of noncompliance, the FAA will make a determination as to whether an airport sponsor is *currently* in compliance with the applicable federal obligations. Consequently, the FAA will consider the successful action by the airport to cure any alleged or potential past violation of

applicable federal obligation to be grounds for dismissal of such allegations. [*See* e.g. Wilson Air Center, LLC., v. Memphis and Shelby County Airport Authority, FAA Docket No. 16-99-10, Director's Determination (August 2, 2000), Final Agency Decision and Order (August 30, 2001).]

Statues, Sponsor Assurances, and Relevant Policies

As a condition precedent to providing airport development assistance under the Airport and Airway Improvement Act of 1982 (AAIA), codified Title 49 U.S.C. § 47101, et seq,, the Secretary of Transportation receives certain assurances from the airport owner or sponsor.

The AAIA, 49 U.S.C. § 47101, et seq., sets forth assurances to which an airport owner or sponsor receiving federal financial assistance must agree as a condition precedent to receiving such assistance. These sponsorship requirements are included in every Airport Improvement Program (AIP) grant agreement. Upon acceptance of an AIP grant by an airport owner or sponsor, the assurances become a binding obligation between the airport owner or sponsor and the Federal government.

The Federal grant assurance that applies to the specific circumstances of this complaint is Federal Grant Assurance 22, *Economic Nondiscrimination.*

Grant Assurance 22, *Economic Nondiscrimination.* Federal Grant Assurance 22, *Economic Nondiscrimination*, (Assurance 22) implements the provisions of 49 U.S.C. § 47107(a)(1) through (6), and requires in pertinent part, that the owner or sponsor of a federally-obligated airport:

> *"...will make its airport available as an airport for public use on reasonable terms, and without unjust discrimination, to all types, kinds, and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport."* [Assurance 22 (a).]
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> *"...may establish such reasonable, and not unjustly discriminatory, conditions to be met by all users of the airport as may be necessary for the safe and efficient operation of the airport."* [Assurance 22 (h).]

Subsection (h) qualifies subsection (a), and subsection (i) represents an exception to subsection (a) to permit the owner or sponsor to exercise control over the airport sufficient to preclude unsafe and inefficient conditions, which would be detrimental to the civil aviation needs of the public.

FAA Order 5190.6A describes the responsibilities under Assurance 22 assumed by the owners or sponsor of public use airports developed with federal assistance. Among these is the obligation to treat in a uniform manner those users making the same or similar use of the airport and to make all airport facilities and services available on reasonable terms without unjust discrimination. [*See* Order, Para. 4-14(a)(2) and 3-1.]

The owner or sponsor of any airport developed with federal grant assistance is required to operate the airport for the use and benefit of the public and to make it available to all types, kinds, and classes of aeronautical activity on reasonable terms, and without unjust discrimination. [*See* Order, Para. 4-13(a).]

FAA policy regarding the airport owner or sponsor's responsibility for ensuring the availability of services on reasonable terms without unjust discrimination provides that third-party leases contain language incorporating these principles. Assurance 22(b) states,

> *"In any agreement contract, lease, or other arrangement under which a right or privilege at the airport is granted to any person, firm, or corporation to conduct or to engage in any aeronautical activity for furnishing services to the public at the airport, the owner or sponsor will insert and enforce provisions requiring the contractor to –*
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> *a. furnish said services on a reasonable, and not unjustly discriminatory, basis to all users thereof, and*
> *b. charge reasonable, and not unjustly discriminatory, prices for each unit or service, provided that the contractor may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers."*

The FAA considers it inappropriate to provide federal assistance for improvements to airports where the benefits of such improvements will not be fully realized due to inherent restrictions of aeronautical activities. [*See* Order, Para. 3-8(a).]

Minimum Standards. FAA Order 5190.6A, describes the responsibilities under the Federal grant assurances assumed by owners or sponsors of public-use airports developed with federal assistance. Among these is the responsibility for enforcing adequate rules, regulation, or ordinances as are necessary to ensure the safe and efficient operation of the airport. [*See* Order, Para. 4-7 & 4-8.]

The FAA encourages airport management, as a matter of prudence, to establish minimum standards to be met by all who would engage in a commercial aeronautical activity at the airport. It is the prerogative of the airport owner or sponsor to impose conditions on users of the airport to ensure its safe and efficient operation. They must be relevant to the proposed activity, reasonably attainable, and uniformly applied. [*See* Order, Para. 3-12.]

The FAA ordinarily makes an official determination regarding the relevance and/or reasonableness of the minimum standards only when the effect of a standard denies an aeronautical activity access to a public-use airport. Such determinations often include consideration of whether failure to meet the qualifications of the standards is a reasonable basis for denial and whether the application of the standard results in an attempt to create an exclusive right. [*See* Order, Para. 3-17(b).]

The airport owner or sponsor may quite properly increase the minimum standards from time to time in order to ensure a higher quality of service to the airport users. Manipulating the standards solely to protect the interest of an existing tenant, however, is unacceptable. [*See* Order, Para. 3-17(c).]

While an airport owner or sponsor may impose minimum standards on those engaged in aeronautical activities, an unreasonable requirement, or any requirement applied in an unjustly discriminatory manner, could constitute the grant of an exclusive right.

FAA Advisory Circular 150/5190-6, *Exclusive Rights at Federally Obligated Airports*, dated January 4, 2007, provides basic information on the prohibition of granting an exclusive right at federally obligated airports. FAA Advisory Circular 150/5190-7, *Minimum Standards for Commercial Aeronautical Activities*, dated August 28, 2006, discusses FAA policy regarding the development and enforcement of airport minimum standards. Although minimum standards are optional, the FAA highly recommends their use and implementation as a means to minimize the potential for violations of federal obligations at federally obligated airports.

Surplus Property Obligations. Surplus property instruments of disposal are issued under the Surplus Property Act of 1944 (SPA). The Act authorizes conveyance of property surplus to the needs of the Federal government. The FAA (or its predecessor, the Civil Aeronautics Administration [CAA]) recommends to the GSA (General Services Administration) which property should be transferred for airport purposes to public agencies. Such deeds are issued by the GSA that has jurisdiction over the disposition of properties that are declared to be surplus to the needs of the Federal government. Prior to the establishment of the GSA in 1949, instruments of disposal were issued by the War Assets Administration (WAA).[17]

Public Law 80-289, approved July 30, 1947, amended Section 13 of the Surplus Property Act of 1944. This authorized the Administrator of WAA (now GSA) to convey to any state, political subdivision, municipality or tax-supported institution, surplus real and personal property for airport purposes without monetary consideration to the United States. These conveyances are subject to the terms, conditions, reservations and restrictions prescribed therein.

Surplus property instruments of transfer are one of the means by which the Federal government provides airport development assistance to public airport sponsors. The conveyance of surplus Federal land to public agencies for airport purposes is administered by the FAA, in conjunction with the U.S. Department of Defense (DOD) and the GSA and pursuant to 49 USC § 47151, 47152, and 47153.

Public Law 81-311 specifically imposes upon the FAA the sole responsibility for determining and enforcing compliance with the terms and conditions of all instruments of transfer by which surplus airport property is or has been conveyed to non-federal public

[17] FAA Order 5190.6A.

agencies pursuant to the SPA. Furthermore, pursuant to 49 USC § 47122, the FAA has a statutory mandate to ensure that airport owners comply with their federal obligations.

All surplus airport property instruments of disposal, except those conveying only personal property, provide that the covenants assumed by the grantee regarding the use, operation and maintenance of the airport and the property transferred shall be deemed to be covenants running with the land. Accordingly, such covenants continue in full force and effect until released under Public Law 81-311 or other applicable Federal law.

Today, 49 USC § 47152 (2) and (3) contains the reasonableness and discriminatory requirements originally stipulated under the Surplus Property Act.

The Complaint Process

Pursuant to 14 CFR §16.23, a person directly and substantially affected by any alleged noncompliance may file a complaint with the FAA. The complainant shall provide a concise but complete statement of the facts relied upon to substantiate each allegation. The complaint shall also describe how the complainant was directly and substantially affected by the things done or omitted by the respondent. [14 CFR § 16.23(b)(3,4).]

If, based on the pleadings, there appears to be a reasonable basis for further investigation, the FAA will investigate the subject matter of the complaint. In rendering its initial determination, the FAA may rely entirely on the complaint and responsive pleadings provided. Each party shall file documents it considers sufficient to present all relevant facts and arguments necessary for the FAA to determine whether the airport owner or sponsor is in compliance. [14 CFR § 16.29.]

The proponent of a motion, request, or order has the burden of proof. A party who has asserted an affirmative defense has the burden of proving the affirmative defense. This standard burden of proof is consistent with the Administrative Procedure Act (APA) and federal case law. The APA provision states, *"[e]xcept as otherwise provided by statute, the proponent of a rule or order has the burden of proof."* [5 U.S.C. § 556(d).] [*See* also, Director, Office of Worker's Compensation Programs, Department of Labor v. Greenwich Collieries, 512 US 267, 272 (1994); Air Canada et al. v. Department of Transportation, 148 F3d 1142, 1155 (DC Cir, 1998).] Title 14 CFR § 16.29 is consistent with 14 CFR § 16.23, which requires that the complainant must submit all documents when available to support his or her complaint. Similarly, 14 CFR § 16.29 states that *"[e]ach party shall file documents that it considers sufficient to present all relevant facts and arguments necessary for the FAA to determine whether the sponsor is in compliance."*

Previous Findings for Shreveport Downtown Airport

Shreveport Downtown Airport has been the subject of a previous Part 16 complaint. A review of the adjudicated complaint follows below:

- Royal Air, Inc., v. City of Shreveport through the Shreveport Airport Authority, FAA Docket No. 16-02-06, Director's Determination (January 9, 2004)

Royal Air made numerous allegations under Federal Grant Assurances 22, *Economic Nondiscrimination* and 23, *Exclusive Rights*. The Director grouped the allegations into three main issues for adjudication.

1. *"Whether the Shreveport Airport Authority impeded Complainant's attempts to establish a commercial self-service fueling facility at the Shreveport Downtown Airport through deliberate delays, withdrawn approvals, and denied access in violation of grant assurances 22, Economic Nondiscrimination, and 23, Exclusive Rights?*
2. *Whether Respondent failed to enforce its minimum standards consistently among all tenants at the Shreveport Downtown Airport in violation of grant assurance 22, Economic Nondiscrimination?*
3. *Whether the Respondent permitted some aeronautical tenants to operate on the Airport without paying appropriate rents and fees while requiring Complainant to pay such rents and fees in violation of grant assurance 22, Economic Nondiscrimination?"* [See Director's Determination, pg. 3]

The Director found Respondent in violation of Grant Assurance 22, *Economic Nondiscrimination*, regarding its inconsistent enforcement of various minimum standards. All other issues were dismissed.

Royal Air alleged Respondent did not enforce its minimum standards consistently regarding: (1) fueling operations, (2) leased-space requirements, (3) staffing requirements, and (4) insurance coverage. In each case, Royal Air alleged Respondent violated Grant Assurance 22, *Economic Nondiscrimination*, placing Royal Air in an unfair economic position by allowing Royal Air's competitors to circumvent the minimum standards while holding Royal Air to those safe standards. [Director's Determination, pg. 26.]

Of relevance to this case are the Director's findings regarding enforcement of the Airport's Minimum Standards. The Director stated *"...it appears the Respondent's intent may be to enforce the minimum standards equally, but its actions have not met that intent."* [Director's Determination, pg. 51.] Specifically, the Director found discrepancies in the Respondent's application of the 1999 Minimum Aviation Standards to aeronautical users and service provides at the Airport, including:

- *"Respondent did not enforce its minimum leased-space requirements for aircraft rental operations;*
- *Respondent incorrectly interpreted and applied its requirement for fixed-base operators to employ mechanics or to make such mechanics available for repair services;*
- *Respondent did not enforce its policy to ensure only authorized mechanics meeting the minimum standards were providing services on the Airport; and,*
- *Respondent did not enforce its minimum insurance standards for aircraft rental operations."* [Director's Determination, pg. 51.]

The Director ordered Respondent to submit a corrective action plan within 30 days addressing how the Shreveport Airport Authority intended to complete the following measures and the projected time-frame for completion:

a) *"Establish written criteria defining those activities appropriately conducted as part of a flight training program and those activities more appropriately identified as an aircraft rental operation.*
b) *Bring all aircraft rental operators into compliance with the leased-space requirements under the 1999 Minimum Aviation Standards or modify the minimum standards, if appropriate, to account for situations when spacing requirements are not practical.*
c) *Establish written guidance to clarify staffing standards for fixed-base operators under the 1999 Minimum Aviation Standards.*
d) *Bring fixed-base operators into compliance with the 1999 Minimum Aviation Standards and with the written clarifying guidance on staffing standards as appropriate.*
e) *Establish effective and prudent measures of enforcement to ensure unauthorized mechanics do not provide services on the Airport in violation of the Airport's 1999 Minimum Aviation Standards.*
f) *Bring all aircraft rental operators into compliance with the 1999 Minimum Aviation Standards for insurance."* [Director's Determination, pg. 56.]

FAA issued the Director's Determination for Royal Air, Inc., v. City of Shreveport through the Shreveport Airport Authority, FAA Docket No. 16-02-06, on January 9, 2004.

On February 20, 2004, the Shreveport Airport Authority submitted its corrective action plan for FAA review. To address the issues identified above, Respondent revised its Minimum Standards effective March 4, 2004. The Amended Minimum Standards effective March 4, 2004, rescinded the 1999 Minimum Aviation Standards. Respondent stated that it "*will require compliance with the [Amended] Minimum Standards*" that would go into effect on March 4, 2004. [FAA Exhibit 1, Item 12, exhibit 1.]

By letter dated May 5, 2004, FAA accepted Respondent's corrective action plan and Amended Minimum Standards for the Airport. The Director stated:

> *"We note that the Authority revised the minimum standards to define and clarify activities and staffing requirements for the various types of aeronautical activities on the Airport. In addition, we note the Authority has taken actions to ensure the revised minimum standards are followed. These actions include: (a) advising all users of the revised standards, (b) planning one or more training sessions – to be completed in May 2004 – with airport tenants to discuss the changes in the minimum standards, (c) distributing, or making available, copies of the revised standards to all tenants, (d) educating staff on the requirements in the minimum*

standards, and (e) working with the Chief of Airport Police to ensure airport police officers are aware of the standards and enforcement procedures. We believe the Authority's actions are responsive to the Director's Determination. We expect that the Authority will continue to enforce the minimum standards consistently." [FAA Exhibit 1, Item 12, exhibit 2.]

VII. ANALYSIS AND DISCUSSION

FAA conducted its review and analysis to determine whether Respondent is in violation of its Federal obligations regarding economic nondiscrimination (Grant Assurance 22 or Surplus Property Act). Each area of analysis is structured to reflect the docketed issues.[18]

Issue 1: Whether Respondent engaged in disparate treatment in violation of Grant Assurance 22, *Economic Nondiscrimination*, by scrutinizing Complainant's financial status, deferring its application for an FBO agreement, and requiring a personal guaranty agreement of Flightline's President, a non-owner employee of the company?

Complainant alleges that Respondent engaged in disparate treatment when it scrutinized Complainant's financial status and required a personal guaranty agreement from Flightline's President, a non-owner employee of the company, when it was initially applying for an FBO Agreement to operate on the Airport. [FAA Exhibit 1, Item 1, pg. 2.] Complainant states that no other FBO applicant or its non-owner employee had been subjected to the required guarantee. [id.] Further, Complainant believes that Respondent deferred its application for an FBO Agreement for months. [id.] Complainant states that Respondent *"would not even permit Complainant to begin operations until all requirements of the [Amended] Minimum Standards were met, meanwhile, Royal Air was permitted to continue its operations in blatant disregard of its defaults and in blatant disregard of the shut down orders."* [FAA Exhibit 1, Item 9, pg. 2.]

Complainant's President did provide a *"limited personal guarantee (one year and $250,000) as requested by [Respondent]..."* [FAA Exhibit 1, Item 1, pg 2.] However, Respondent later revised its requirement to *"a guarantee unlimited as to amount and through the longest lease period available..."* [id.] Complainant states the Boyd's (Mr. Jeffrey Boyd & Ms. Cynthia Boyd) agreed to provided the revised guaranty *"in order to get the application approved and the business started."* [id.]

Respondent denies the allegations that it engaged in disparate treatment and states:

> *"...[Respondent] took no steps whatsoever to make any application process onerous... The application process was designed only to assure the general aviation community a person qualifying to operate as an FBO has the requisite*

[18] See Footnote 7 supra.

> *financial resources and expertise to operate properly and to protect [Respondent].*" [FAA Exhibit 1, Item 5, pg. 3.]

Respondent believes it clearly expressed to Complainant that *"no one would be permitted to go into business at [the Airport] without meeting all requirements of the [Amended Minimum Standards]."* [id.]

The Amended Minimum Standards, adopted to comply with the FAA-approved Corrective Action Plan[19], required applicants for an FBO Agreement to provide specific information before getting approval to conduct on-airport activities; including financial information. [*See* Amended Minimum Standards, Section 3.7.2, Commercial Operators, FAA Exhibit 1, Item 5, exhibit 2.] Section 3.7 of the Amended Minimum Standards, titled 'Application', provides the requirements for commercial operators applying for an FBO Agreement at the Airport. Among other things, an applicant must provide:

> *"(8) Evidence of financial responsibility from a bank or from such other source that may be readily verified through normal banking channels.*
> *(9) Evidence of financial capability to initiate operations and for the construction of buildings, improvements and appurtenances and the ability to provide working capital to carry on the contemplated operation once it is initiated."* [FAA Exhibit 1, Item 5, exhibit 2, pg. 19.]

Respondent declares that it did not single out Complainant by requiring certain financial assurances such as the personal guaranty. [FAA Exhibit 1, Item 5, pg. 8.] Complainant just happened to be the first applicant for an FBO Agreement after the Amended Minimum Standards came into effect. [id.] The existing FBO operating on the Airport, Royal Air, already had an FBO Agreement in place which was executed before the Amended Minimum Standards took effect.

While Respondent admits requiring a personal guaranty for the obligations, it declares that whether the personal guaranty *"was provided by Mr. Boyd or someone else was irrelevant to [Respondent]."* [FAA Exhibit 1, Item 5, pgs.5 & 10.] It reasons that the personal guaranty was required since Complainant had little to no assets at the time it applied for an FBO Agreement. [FAA Exhibit 1, Item 5, pg. 5.] Respondent states *"in lieu of requiring a bond or financial statement or track record (which could not be provided by Flightline as a new business), a personal guaranty was requested of someone to guarantee the obligations of Flightline."*[20] [id.]

FAA Grant Assurance 22, *Economic Nondiscrimination*, provides in pertinent part that,

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[19] *See* Royal Air, Inc. v. City of Shreveport through the Shreveport Airport Authority, FAA Docket No. 16-02-06, Director's Determination (January 9, 2004).

[20] Complainant was awarded an FBO Agreement in October 2004 and operated on the Airport through June 2007. Respondent claims Complainant failed to pay fuel flowage fees or rent for all months following February 2007 and that it may have to make a call on the personal guaranty. [FAA Exhibit 1, Item 5, pg. 10.]

> *"a. [The airport sponsor] will make the airport available as an airport for public use on reasonable terms and without unjust discrimination to all types, kinds and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport.*
>
> *h. The sponsor may establish such reasonable, and not unjustly discriminatory, conditions to be met by all users of the airport as may be necessary for the safe and efficient operation of the airport."*

FAA encourages airport management to establish minimum standards to be met by all who would engage in commercial aeronautical activities at the airport. [*See* Order Para. 3-12 & AC 150/5190-7, *Minimum Standards for Commercial Aeronautical Activities*, dated August 28, 2006.] Once the airport sponsor has established minimum standards, it should apply them objectively and uniformly to all similarly situated on-airport aeronautical service providers. [AC 150/5190-7, pg. 3.] In addition, the airport owner or sponsor may increase the minimum standards from time to time in order to ensure a higher quality of service to the airport users. [*See* Order, Para. 3-17(c).]

In this case, Respondent amended its Minimum Standards as part of its corrective action plan with FAA's Order in the Director's Determination for Royal Air, Inc. v. City of Shreveport through the Shreveport Airport Authority, FAA Docket No. 16-02-06, dated January 9, 2004. The Amended Minimum Standards included specific requirements for applicants seeking an FBO Agreement to conduct commercial aeronautical services on the Airport.

At the time Complainant applied for an FBO Agreement, Royal Air was an established FBO operating under an FBO Agreement enacted before the Amended Minimum Standards came into effect. It is unreasonable for Royal Air to be held to the new requirements in the 'Application' section of the Amended Minimum Standards since it was an established FBO operating on the Airport with an FBO Agreement.[21] Further, FAA has upheld in other Part 16 decisions that it does not expect an airport sponsor to apply revised minimum standards retroactively to actions that have already been completed, such as application requirements for an existing agreement. [*See* M. Daniel Carey and Cliff Davenport v. Afton-Lincoln County Municipal Airport Joint Powers Board, FAA Docket No. 16-06-06, Director's Determination (January 19, 2007), pg. 27.]

Complainant, on the other hand, was the first new applicant seeking an FBO Agreement after the Amended Minimum Standards came into effect. Complainant was a new applicant and had to go through the application process for obtaining an FBO Agreement on the Airport. For that reason, Complainant is not similarly situated to Royal Air for compliance with requirements under the 'Application' section of the Amended Minimum Standards regarding application for a new FBO Agreement.

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[21] Royal Air's compliance with other applicable requirements of the Amended Minimum Standards will be discussed further in the analysis for Issues 2 & 3.

Complainant provides no documents to support an argument that it was treated differently than any other similarly situated FBOs, that being a new applicant seeking an FBO Agreement to operate on the Airport. Based on the Record provided by the parties, FAA cannot find any disparate treatment with regard to this issue.

Since there are no similarly situated users, the next point for analysis is whether Respondent's requirements of Complainant were reasonable. FAA has upheld an airport sponsors right to protect itself from financial and/or litigation risk. [Glyn Johnson, d/b/a Zoo City Skydivers, v. Yazoo County and the Yazoo County Port Commission, FAA Docket No. 16-04-06, Director's Determination (February 9, 2006) & Jacquelin R. Ashton and Kent Ashton v. City of Concord, NC, FAA Docket No. 16-02-01, Director's Determination (August 22, 2003) Final Agency Decision (February 27, 2004).] It appears that Respondent's requirements for financial information in the Amended Minimum Standards are simply a way of protecting itself and the aeronautical community operating on the Airport from financial risk.

Complainant does not argue the point that Respondent raised citing Complainant had no assets to support the requirement for *"evidence of financial responsibility"* or *"evidence of financial capability."* It appears Respondent accommodated Complainant's situation by permitting it to meet the Amended Minimum Standards by other acceptable means, through a personal guaranty, while still providing adequate protection to the Airport from financial risk.

Respondent provided a copy of the Guaranty to the Record. [*See* FAA Exhibit 1, Item 5, exhibit 8.] The Guaranty signed by Mr. Jeffrey Boyd and Ms. Cynthia Boyd was executed on October 11, 2004. While the Record reflects that Mr. Boyd, the President and 'non-owner' by Complainant's admission, signed the guaranty, the Record fails to reflect that Respondent specifically required Mr. Boyd to sign for the personal guaranty. In fact, Mr. Boyd co-signed the guaranty with Ms. Boyd. Complainant does not suggest it offered an "owner" as signatory to the guaranty. The burden of proof rests with the Complainant.[22] [*See also* Applicable Law and Policy.]

Complainant may take issue with the fact that Mr. Boyd, as a 'non-owner' signed the personal guaranty, but the Record reflects that Mr. Boyd is a *"person having an interest in the Partnership or Corporation"* as stated on Complainant's Application for Fixed Base Operation Fuel Permit. [*See* FAA Exhibit 1, Item 5, exhibit 8.] Further, Ms. Boyd is identified as a responsible party on the attached Certificate of Liability Insurance provided as proof of Workers Compensation & Employers' Liability Insurance. [id.] It also appears that Respondent may have accepted anyone as guarantor as long as proper coverage existed. FAA finds Respondent's requirement for a guaranty an acceptable means for complying with its own Amended Minimum Standards and protecting itself from financial risk.

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[22] In a Part 16 proceeding, the Complainant carries the burden to show, by a preponderance of proof, that a sponsor has violated its federal grant assurances. [SeaSands Air Transport Inc., v. Huntsville-Madison County Airport Authority, FAA Docket No. 16-05-17, Director's Determination (August 28, 2006), pg. 14.]

Additionally, FAA finds no violation of the Federal grant assurances or surplus property conveyance with regard to Complainant's allegation of disparate treatment when Respondent required Complainant to comply with all requirements of the Amended Minimum Standards before starting operations on the Airport. Again, Complainant and Royal Air are not similarly situated. Complainant was a new applicant seeking an FBO Agreement to conduct operations on the Airport. Royal Air was already an established FBO with an FBO Agreement.

For further discussion in Issues 2 & 3, Respondent took separate actions against Complainant's competitor, Royal Air, for its failure to comply with the Amended Minimum Standards. Just because one operator fails to comply with applicable minimum standards does not mean that the airport sponsor must permit other operators to do the same. Additionally, an airport sponsor has the right to correct past deficiencies of compliance. [Roadhouse Aviation v. City of Tulsa and the Tulsa Airports Improvement Trust, FAA Docket No. 16-05-08, Director's Determination (December 14, 2006).]

Furthermore, FAA believes it is very reasonable and a good compliance practice to require all new entrants to meet all minimum standards before starting operations on the airport. This practice ensures a level playing field for similarly situated users and protects the airport sponsor from claims of disparate treatment. [*See* Rick Aviation, Inc., v. Peninsula Airport Commission, FAA Docket No. 16-05-18, Director's Determination (November 6, 2007) pg. 38.] Here, Respondent did not unreasonably withhold an FBO Agreement from Complainant and, in fact, awarded Complainant an FBO Agreement in October 2004.

FAA is also not persuaded by Complainant's allegation that Respondent unreasonably delayed acceptance of its application for an FBO Agreement. [FAA Exhibit 1, Item 1, pg. 2.] The Record reflects that it took four months between the time Respondent approved the request by Mr. Boyd to operate a full service FBO on the Airport to the time Complainant and Respondent entered into an FBO Agreement. FAA does not find this untimely or unreasonable due to the time it took for Complainant to meet the Amended Minimum Standards, for the two parties to agree to terms of the FBO Agreement, and for Respondent's governing body to approve the request to operate on the Airport and execution of the FBO Agreement.

Finally, Complainant makes many allegations against Respondent's Board Chairman (Mr. Howard Malpass) claiming he *"was adverse to Complainant and sought to stop it from qualifying at every turn."* [FAA Exhibit 1, Item 9, pg. 3.] It its Reply, Complainant states:

> *"since the Complaint was filed, Complainant has discovered a direct conflict of interest between Howard Malpass, who served as Chairman of SAA and who, as mentioned in the Complaint, took action to insure that Complainant was disadvantaged. Malpass, it turns out, was a customer of Royal Air and was permitted to charge on open account for services and supplies and those charges*

were written off by Royal Air, which Complainant believes was for favors given by Malpass." [FAA Exhibit 1, Item 9, pgs. 4-5.]

Respondent believes the allegations toward Mr. Malpass are *"absolutely without foundation"* and *"adamantly [denies] bowing to any pressure from Malpass to somehow protect or favor Royal Air."* [FAA Exhibit 1, Item 10, pg. 4.] Respondent adds that Mr. Malpass is no longer a member of Respondent's Board. [FAA Exhibit 1, Item 5, pg. 8.]

Regardless of the possible biased actions of an individual Board member, FAA has found in similar cases that *"the Authority acts as a collective body, not through the statements or actions of individuals."* [*See* Boca Airport, Inc., d/b/a/ Boca Aviation v. Boca Raton Airport Authority, FAA Docket No. 16-04-02, Final Agency Decision (November 29. 2004), pg. 15.] Further, FAA deals in current compliance. [Roadhouse Aviation v. City of Tulsa and the Tulsa Airports Improvement Trust, FAA Docket No. 16-05-08, Director's Determination (December 14, 2006).] Mr. Malpass appears to no longer be in a position of power on Respondent's Board and the alleged actions by Mr. Malpass did not prevent Complainant from entering into an FBO Agreement or from starting operations on the Airport. Complainant operated on the Airport for nearly three years before its FBO Agreement was terminated for default.

Therefore, FAA finds that Respondent did not engage in disparate treatment or subject Complainant to unreasonable requirements through its Amended Minimum Standards. With regard to this issue, Respondent is not in violation of Grant Assurance 22, *Economic Nondiscrimination* or surplus property conveyance language prohibiting unjust discrimination.

Issue 2: Whether Respondent failed to equally enforce insurance provisions required by the Amended Minimum Standards upon all FBOs on the Airport, in violation of Grant Assurance 22, *Economic Nondiscrimination*?

Complainant alleges Respondent failed to enforce the insurance requirements of the Amended Minimum Standards section titled 'Minimum Insurance Requirements' equally upon all FBOs operating on the Airport, but in particular, Complainant's competitor, Royal Air.[23] [FAA Exhibit 1, Item 1, pg. 5.]

Complainant states that *"no matter how hard [it] tried to comply with the [Amended] Minimum Standards, Royal Air, Inc. was permitted to continue to operate as it had done for years without proper compliance."* [FAA Exhibit 1, Item 9, pg. 3.]

As an example of the unequal enforcement, Complainant states that it was required to obtain Environmental Liability Insurance, as required by the Amended Minimum Standards. However, Complainant argues, *"that element of the [Amended] Minimum*

[23] Complainant was awarded an FBO Agreement in October 2004. The analysis of Issues 2 and 3 focus on Complainant's status after it was awarded an FBO Agreement and started operations on the Airport, unlike in Issue 1, where it was applying for an FBO Agreement and not yet operating on the Airport.

Standards had never been enforced against any previous FBO and [Respondent's] staff had assumed that it would not and could not require that coverage of Flightline as to do so would be unequal treatment." [FAA Exhibit 1, Item 1, pg. 2.]

Complainant claims it made *"diligent inquiries with its insurance agent"* to acquire the required coverage and *"the requirement for Environmental Liability coverage was unheard of and quotes returned to Flightline were cost prohibitive."* [id.] Complainant states that Respondent later determined that Pollution Legal Liability Insurance was an acceptable substitute for the Environmental Legal Liability Insurance.

Complainant states that it was required to obtain the coverage before commencing fueling operations on the Airport. [FAA Exhibit 1, Item 1, pg. 3.] On the other hand, Complainant claims that Royal Air *"was allowed to operate without any Pollution or Environmental Coverage of any kind."* [id.]

Complainant also *"learned that Royal Air had not had any Business Auto Liability Insurance and All Risk Property Insurance from commencement of business."* [FAA Exhibit 1, Item 1, pg. 4.] Complainant takes issue with the fact that *"Royal Air was permitted to operate without any of these required coverages from inception until well after Flightline was compliant and in business."* [id.]

In October 2006, Complainant states that Respondent criticized it for failure to have required cancelation notice language in its insurance coverage policy documents. [FAA Exhibit 1, Item 1, pg. 3.] Complainant states that it *"persisted in attempting to get the standard language modified and did in February 2007 provide acceptable language on its Commercial General Liability Policy, the backbone of coverage required for its operation."* [FAA Exhibit 1, Item 1, pg. 4.] However, in April 2007, Complainant claims it was ordered to cease operations for lack of the nonstandard language in the other required insurance policies. [id.]

Complainant alleges Respondent did not enforce the requirement on Royal Air stating *"Royal Air's policy contained the same standard language for which Flightline was issued a shutdown order."* [FAA Exhibit 1, Item 1, pg. 4.]

Respondent denies it has discriminated against or in favor of any FBO and states that it has *"taken effective steps to prevent any discrimination or inconsistent application of [the Amended] Minimum Standards."* [FAA Exhibit 1, Item 5, pg. 6.] Respondent claims Complainant was given *"dispensation"* because Royal Air was given time to comply with the Amended Minimum Standards. [FAA Exhibit 1, Item 10, pg. 2.]

Respondent states *"despite Flightline's claim, both Royal and Flightline were permitted to stay open and operate during a period when both were asked to come into compliance with all of the [Amended] Minimum Standards."* [FAA Exhibit 1, Item 5, pg. 11.] To support this statement, Respondent provides numerous letters to the Record documenting its communication with Complainant and Royal Air regarding their failure to comply

with the Amended Minimum Standards. A summary of the pertinent communication follows:

- Respondent first notified both Complainant and Royal Air by letter dated November 17, 2004, that they were not in compliance with the Amended Minimum Standards regarding certain insurance requirements. [FAA Exhibit 1, Item 5, exhibit 12, & Item 1, exhibit 7.] While Respondent gave Complainant and Royal Air until December 1, 2004 to obtain the required coverage, Respondent provided numerous extensions of time to comply with the Amended Minimum Standards regarding the insurance coverage. [*See* FAA Exhibit 1, Item 5, exhibits 13 & 18 (#16).]

- Royal Air failed to provide proof of the required insurance coverage, so Respondent ordered Royal Air, by letter dated December 31, 2004, to cease aircraft fueling and use of the Airport's Fuel Farm. [FAA Exhibit 1, Item 5, exhibit 18, #18 & Item 1, exhibit 9.]

- On January 20, 2005, Royal Air informed Respondent that it could not obtain the required Pollution Legal Liability Insurance[24] and later requested permission to self-insurance against the liability. [FAA Exhibit 1, Item 5, exhibits 10 & 11.] Respondent denied the request.

- Respondent again notified both Complainant and Royal Air, by letter dated April 15, 2005, that they were not in compliance with the Amended Minimum Standards. [FAA Exhibit 1, Item 5, exhibits 14 & 15.]

- While Complainant took action to rectify its noncompliant issues identified in the April 15, 2005 letter, Royal Air requested a variance for certain requirements of the Amended Minimum Standards including those requiring Business Automobile Liability Insurance, All Risk Property Insurance, Hangarkeepers Liability and Legal Liability Insurance. [FAA Exhibit 1, Item 5, exhibit 25 & Item 1, exhibit 18.] Respondent denied the request. [FAA Exhibit 1, Item 5, exhibit 26.] Respondent believes this action shows its *"clear refusal to permit unequal treatment by granting the variance."* [FAA Exhibit 1, Item 5, pg. 19.]

- On June 23, 2005, Respondent informed Royal Air that it was terminating its FBO Agreement and its right to operate on the Airport. [FAA Exhibit 1, Item 5, exhibit 17.] Royal Air refused to cease operations. [FAA Exhibit 1, Item 5,

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[24] Respondent confirms that the Amended Minimum Standards had included the Environmental Impairment Liability as a requirement for FBOs. [FAA Exhibit 1, Item 5, pg. 11.] However, it later agreed to allow Pollution Legal Liability Insurance as an acceptable alternative to the Environmental Impairment Liability Insurance. [id.]

exhibit 18, #36.] Shortly thereafter, Respondent filed a Petition for Temporary Restraining Order and Injunctive Relief.[25]

- By letter of October 24, 2005, Respondent notified Complainant that two of its required insurance policies had expired and Complainant was to immediately provide certified copies of the replacement policies to ensure compliance with the Amended Minimum Standards. [FAA Exhibit 1, Item 5, exhibit 20.]

- By November 2, 2005, Complainant still had not provided Respondent proof of required insurance as requested by Respondent on October 24, 2005. [FAA Exhibit 1, Item 5, exhibit 20.]

- Nearly one and a half years later, by letter dated February 27, 2007, Respondent informed Complainant that it was in violation of the Amended Minimum Standards, including failure to provide proof of insurance for required coverages for Commercial General Liability, Workers Compensation and Employers Liability, Independent Contractors Coverage, Business Automobile Liability, All Risk Property Insurance, Pollution Legal Liability, Trucker's Liability Hangarkeepers Liability, Aircraft Liability, and Hangarkeepers Legal Liability. [FAA Exhibit 1, Item 5, exhibit 21, & Item 1, exhibit 17.] Complainant was given thirty days to cure its defaults. [id.]

- Complainant had still not provided the necessary documentation by April 17, 2007, so Respondent notified Complainant that it had terminated Complainant's FBO Agreement. [FAA Exhibit 1, Item 5, exhibit 22 & Item 1, exhibit 15.]

Respondent adds *"if Royal operated without requisite coverages, it was an error on the part of [Respondent] which has now been rectified."* [FAA Exhibit 1, Item 5, pg. 19.] Respondent confirms that to date, Airport staff understand the requirements of the Amended Minimum Standards. [FAA Exhibit 1, Item 5, pg. 19.]

Finally, with regard to requiring Complainant to insert certain language in the insurance policies, Respondent claims its *"Risk Manager may have been in error in declaring that all of the policies for Royal and Flightline did not have the requested language regarding naming the [Respondent] as an additional insured."* [emphasis added] [FAA Exhibit 1, Item 5, pg. 13.] Respondent clarifies:

> *"The Risk Manager for the City of Shreveport prescribed the language which is obviously an attempt to protect the public fisc. For an insurer to simply state that it 'will endeavor to mail 10 days written notice to the certificate holder' but failure to do so shall impose no obligation or liability of any kind on the insurer is to place the [Respondent] and thus the public fisc in a vulnerable situation. It provides no assurance that the [Respondent] will be made aware of any*

[25] While Respondent is engaged in litigation against Royal Air for other matters, Royal Air has obtained the required Pollution Legal Liability Insurance coverage. [FAA Exhibit 1, Item 5, pg. 12.]

cancellation of insurance for, for instance, non-payment of premium." [FAA Exhibit 1, Item 5, pg. 13.]

Again, FAA encourages airport management, as a matter of prudence, to establish minimum standards to be met by all who would engage in a commercial aeronautical activity at the airport. It is the prerogative of the airport owner or sponsor to impose conditions on users of the airport to ensure its safe and efficient operation. Such conditions must be fair, equal, and not unjustly discriminatory. They must be relevant to the proposed activity, reasonably attainable, and uniformly applied.

Once the airport sponsor has established minimum standards, it should apply them objectively and uniformly to all similarly situated on-airport aeronautical activities and services. [*See* FAA AC 150/5190-7, section 1.1.]

Unlike in the analysis of Issue 1 which focused on allegations regarding the application process for a new FBO and Complainant's treatment when it was an applicant for an FBO Agreement, Issues 2 and 3 will be analyzed with respect to conditions after Complainant obtained an FBO Agreement and began operating as an FBO on the Airport. Therefore, Complainant and Royal Air are considered similarly situated regarding compliance with insurance requirements in the Amended Minimum Standards since they are required of all FBOs operating on the Airport. After October 2004, when Respondent awarded Complainant an FBO Agreement, Complainant and Royal Air both operated as FBOs on the Airport.

Whether or not Complainant was required to meet these standards before it was awarded an FBO Agreement is irrelevant with regard to this issue because the insurance requirements of the Amended Minimum Standards continue to apply as long as the FBOs are operating on the Airport. In this case, once Complainant entered its FBO Agreement, it obtained the same 'status' as Royal Air; that being FBOs operating on the Airport. Therefore, under Grant Assurance 22 the airport sponsor should apply the same insurance requirements under the Amended Minimum Standards upon both FBOs objectively and uniformly.

The Record clearly reflects that on numerous occasions over a three year period both FBOs, Complainant and Royal Air, violated provisions of the Amended Minimum Standards. The Record also clearly documents Respondent's notice to the FBOs of their violations and an accommodation of time for them to correct the violations and comply with the Amended Minimum Standards.

In similar complaints filed under Part 16, FAA has confirmed the *"standard for an airport sponsor's noncompliance with its Federal obligations is not the simple fact of a tenant's noncompliance with its lease terms, or the sponsor's minimum standards."* [*See* Rick Aviation, Inc. v. Peninsula Airport Commission, FAA Docket No. 16-05-18, Director's Determination (November 6, 2007), pg. 16.] FAA Order 5190.6A provides:

> *"It is the FAA's position that the airport owner meets [Federal obligations] when: a) the obligations are fully understood, b) a program (preventative maintenance, leasing policies, operating regulations, etc.) is in place which in FAA's judgment is adequate to reasonably carry out these commitments, and c) the owner satisfactorily demonstrates that such a program is being carried out."* [Order 5-6(a)(2).]

Hence, FAA deems that an airport sponsor is in compliance with its Federal grant assurances if it has a program in place to address its respective grant obligations, it implements that program, and takes reasonable steps to enforce its program.

In this case, Respondent clearly understands its obligations under Grant Assurance 22; that it must enforce standards equally among similarly situated operators. It has a program or process in place and is implementing that program to ensure compliance with Grant Assurance 22 as evidenced by a multitude of correspondence to the two FBOs for the violations of the Amended Minimum Standards and the actions by Respondent to address those violations. Based on these facts, Respondent is complying with its obligations under Grant Assurance 22.

Furthermore, while Respondent's actions in the past to equitably enforce its standards may have been lacking, FAA is interested in current compliance. [*See* Wilson Air Center, LLC v. Memphis and Shelby County Airport Authority, FAA Docket No. 16-99-10, Director's Determination (August 2, 2000) & Roadhouse Aviation v. City of Tulsa & the Tulsa Airports Improvement Trust, FAA Docket No. 16-05-08, Director's Determination (December 14, 2006), Final Decision and Order (June 26, 2007).] The fact Respondent may not have enforced certain provisions of its standards in the past does not impact is compliance status today since it is equitably enforcing the insurance provisions of its Amended Minimum Standards upon both FBOs today.

Additionally, based on the Record provided, its does not appear that Respondent's requirement to insert certain language in the insurance policies is unreasonable. The burden of proof rests with Complainant. [*See* Applicable Law and Policy.] The Record reflects that Complainant was able to get the language inserted in certain policies. [FAA Exhibit 1, Item 1, pg. 4.] However, Complainant fails to provide proof that it was unable to comply with Respondent's requirement for all the policies and that insurance providers refused to include the specific language in their policies with Complainant.

FAA notes that Respondent has made major accommodations to assist its FBOs in complying with the Amended Minimum Standards. First, after being approached by the FBOs regarding the unavailability and cost prohibitiveness of the Environmental Insurance requirements, Respondent researched the problem and made concessions to accept alternative means of compliance; substitute coverage through Pollution Legal Liability insurance. Second, when each of the FBOs failed to comply with provisions of the Amended Minimum Standards, Respondent provided numerous extensions of time to comply. Furthermore, Respondent took legal action against Royal Air after it failed to comply with the Amended Minimum Standards and refused to cease operations. Finally,

it would not be unreasonable for Respondent to take the same actions against Complainant in enforcing the requirements if Complainant ignored Respondent.

Therefore, FAA finds that Respondent has equitably enforced the insurance provisions required by its Amended Minimum Standards among the FBOs on the Airport and is not in violation of Grant Assurance 22, *Economic Nondiscrimination.*

Issue 3: Whether Respondent violated Grant Assurance 22, *Economic Nondiscrimination*, by terminating Complainant's FBO Agreement?

Complainant alleges Respondent's actions to terminate Complainant's FBO Agreement are a violation of Grant Assurance 22, *Economic Nondiscrimination*, since Complainant's competitor, Royal Air, was also in default of its FBO Agreement but continues to operate on the Airport. [FAA Exhibit 1, Items 1 & 9.] Specifically, Complainant states it *"was shut down for lack of insurance coverage once approved (and unchanged) by the city Risk Manager while Royal Air lacked required coverage for years."* [FAA Exhibit 1, Item 1, pg. 5.] Complainant believes this is *"discriminatory and unequal treatment."* [id.]

Complainant believes Respondent has not taken diligent efforts to terminate Royal Air's FBO Agreement. [FAA Exhibit 1, Item 9, pg. 4.] Complainant states that *"shutdown orders were not issued as threatened, or when issued, were ignored by Royal Air and [Respondent] took no action to enforce the shutdown situation."* [id.]

While Complainant acknowledges Respondent filed suit against Royal Air in June 2005, Complainant believes *"the suit has not been prosecuted with diligence so that Royal Air is ordered to shut down."* [FAA Exhibit 1, Item 9, pg. 2.]

Complainant concedes that it has refused to pay rent and fuel flowage fees for the months of March and April 2007 because it believes *"that it will never be treated fairly on any issues pending before [Respondent]."* [FAA Exhibit 1, Item 1, pg. 4.] Complainant states Respondent gave it no time to cure the default before terminating its FBO Agreement. [id.] Further, Complainant believes *"Royal Air has consistently refused to pay additional and revised rent indicated due upon an appraisal done by [Respondent]."* [id.]

Unlike Royal Air, Complainant obeyed the shutdown order and decided to *"seek redress in other ways."* [FAA Exhibit 1, Item 1, pg. 5.]

Respondent denies that it violated Grant Assurance 22 by terminating Complainant's FBO Agreement. [FAA Exhibit 1, Item 5.] Respondent states it terminated Complainant's FBO Agreement for failure to cure 'lease' defaults including failure to comply with requirements of the Amended Minimum Standards. [FAA Exhibit 1, Item 5, pg. 17.] While Respondent argues that it did not use Complainant's failure to pay rent as a basis for terminating its FBO Agreement, it states that Complainant's President has

"aggressively advised" Respondent that it will not pay. [FAA Exhibit 1, Item 5, pg. 16-17.]

Respondent avers:

> *"the entire period of Flightline's operation as a Fixed Base Operator at the Downtown Shreveport Airport was marked by its failure to comply with, among other sections, Sections 6.2.2.5, 6.2.2.6, 8.6.2.2(b) and (d) of the Minimum Standards regarding employment of mechanics and flight instructors, etc. It also failed, among other things, to maintain its fuel supply. The complaint by [Complainant] seems to be that even though it never fully complied with the Minimum Standards at any time, that should be no factor for the [Respondent]."* [FAA Exhibit 1, Item 10, pg. 3.]

As summarized in Issue 2, Respondent submitted numerous letters to the Record documenting its communication with Complainant and Royal Air regarding their failure to comply with the Amended Minimum Standards. [*See* FAA Exhibit 1, Item 5, exhibits 12, 13, 14, 15, 17, 18, 20, 22, & 26.] Respondent later notified Complainant through numerous communications of its failure to pay rent and fuel flowage fees. [See FAA Exhibit 1, Item 5, exhibits 22 & 23.] Respondent states *"[Complainant], however, repeatedly failed to read and meet the Minimum Standards."* [FAA Exhibit 1, Item 5, pg. 17.]

As for its actions against Complainant's competitor, Royal Air, Respondent states that it ordered Royal Air to cease operations due to its failure to provide evidence of Pollution Legal Liability Insurance coverage and to remediate a diesel fuel spill. [FAA Exhibit 1, Item 5, pg. 11.] Royal Air refused to cease operation so Respondent *"filed for an injunction to enjoin Royal from continuing to operate as an FBO and to force Royal to remediate the diesel spill in that matter..."* [FAA Exhibit 1, Item 5, pgs. 11-12.]

Respondent believes it has taken diligent efforts to deal with Royal Air's default and believes *"the fact that [the suit] has not been heard in court is not evidence that it has not been prosecuted with diligence."* [FAA Exhibit 1, Item 10, pg. 3.] Respondent declares that it *"is grateful that it was not required to file suit against [Complainant] in order for [Complainant] to cease operations but the [Respondent] is not to blame for the fact that Royal Air defied that order."* [id.] Further, Respondent states that Royal Air has obtained required insurance coverage, specifically Pollution Legal Liability insurance, pending hearing on the City suit. [FAA Exhibit 1, Item 5, pg. 12.]

Under Grant Assurance 22, *Economic Nondiscrimination*, an airport owner must make the airport available for public use on reasonable terms and without unjust discrimination to all types, kinds, and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport.

FAA finds Respondent's actions to terminate Complainant and Royal Air's FBO Agreements are not unreasonable. Respondent took the same initial action to notify

Complainant and Royal Air in writing of their defaults. Respondent offered the same accommodation of extensions of time to Complainant and Royal Air to comply with the Amended Minimum Standards and cure their defaults. Further, Respondent took the same action to notify Complainant and Royal Air in writing of its order to cease operations and plan to terminate their FBO Agreements.

Simply because Complainant chose to obey Respondent's order to cease operations and Royal Air did not, does not mean that Respondent is in violation of its Federal obligations. Respondent has taken steps to evict Royal Air through legal action and that meets its obligations under the grant assurances.

FAA believes Respondent's termination of Complainant's FBO Agreement is completely substantiated based on Complainant's repeated failure to comply with the Amended Minimum Standards. Further, the Record supports termination for failure to pay rent or fees even though Respondent claims it did not use such failure as a basis for termination of Complainant's FBO Agreement. Previous Part 16 decisions have affirmed an airport sponsor's ability to terminate a lease or an agreement of a tenant for a default under the terms of the lease or agreement. [*See* Rick Aviation, Inc., v. Peninsula Airport Commission, FAA Docket No. 16-05-18, Director's Determination (May 8, 2007), Final Decision and Order (November 6, 2007) & SeaSands Air Transport, Inc., v. Huntsville-Madison County Airport Authority, FAA Docket No. 16-05-17, Director's Determination (August 28, 2006).] Additionally, FAA has found that *"a material breach may be a valid basis for Complainant's removal from the Airport and does not automatically constitute economic discrimination."* [*See* Rick Aviation, Director's Determination pg. 21.]

In this case, there is a documented history of Complainant's continued failure to adhering to Amended Minimum Standards. The FBO Agreement clearly defines the actions that cause an 'Event of Default' under the FBO Agreement, including:

> *"a. Failure of Flightline to pay any monthly installment of rent or any Sum due under this Agreement to [Respondent] when due under any Agreements between Flightline and the [Respondent] and/or under any leases, subleases or assignments of leases to which Flightline is a party if such failure continues for a period of ten (10) days;*
> *b. Failure by Flightline to perform or comply with any of the terms, covenants or conditions of this Agreement, or with any statute, rule or regulation now or hereafter adopted by the Authority, Federal, State, or Parish including but not limited to Federal Aviation Authority regulations, if such failure continues for thirty (30) days after written notice from Authority. If such failure involves a threat to public health or safety or the financial security of the [Respondent], Flightline acknowledges and agrees that the Authority may order it to immediately cease operations and that Flightline must comply."* [FAA Exhibit 1, Item 5, exhibit 9, pg. 13.]

Moreover, Complainant has blatantly disregarded its obligation to pay rent and fees to Respondent and Respondent is under no obligation to put itself under further financial

risk. The grant assurances do not necessarily protect an aeronautical tenant who defaults under the terms of agreements it enters into with an airport sponsor, regardless of the tenant's reasons for the default. By signing the FBO Agreement, Complainant agreed to its terms and conditions which specified that failure to pay rent or adhere to Respondent's rules/regulations (i.e. Amended Minimum Standards) would result in a default and allow Respondent to terminate the FBO Agreement and reclaim possession of its premises on the Airport. [*See* FAA Exhibit 1, Item 5, exhibit 9, pg. 17.]

Therefore, FAA finds that Respondent has not violated Grant Assurance 22, *Economic Nondiscrimination*, by terminating Complainant's FBO Agreement.

VIII. FINDINGS AND CONCLUSIONS

Upon consideration of the entire record herein, the applicable law and policy, and for the reasons stated above, the Director finds and concludes:

1. Respondent has not engaged in disparate treatment in violation of Grant Assurance 22, *Economic Nondiscrimination*, or the surplus property conveyance, by scrutinizing Complainant's financial status and requiring a personal guaranty agreement. Further, the Record does not reflect that Respondent unreasonably deferred Complainant's application for an FBO Agreement.
2. Respondent has not engaged in disparate treatment in violation of Grant Assurance 22, *Economic Nondiscrimination*. Respondent has equitably enforced the insurance requirements prescribed in the Amended Minimum Standards upon all FBOs operating on the Airport. Respondent has taken similar action against both FBOs for their failure to comply with requirements of the Amended Minimum Standards.
3. Respondent has not engaged in disparate treatment or unjust discrimination in violation of Grant Assurance 22, *Economic Nondiscrimination*, by terminating Complainant's FBO Agreement. Complainant's actions resulted in a material breach of the FBO Agreement. Further, Respondent has taken adequate action against other FBOs who have defaulted on the terms of their FBO Agreement(s).

ORDER

ACCORDINGLY, the Director finds the City of Shreveport not currently in violation of applicable Federal law and its Federal grant obligations.

1. The case is dismissed.
2. All motions not specifically granted herein are denied.

RIGHT OF APPEAL

This Director's Determination is an initial agency determination and does not constitute final agency action and order subject to judicial review. [14 CFR § 16.247(b)(2).] A party to this proceeding adversely affected by the Director's Determination may appeal the initial determination to the FAA Associate Administrator for Airports pursuant to 14 CFR § 16.33(b) within thirty (30) days after service of the Director's Determination.

Wayne T. Heibeck
Acting Director
Office of Airport Safety and Standards

Date 2/7/08

FLIGHTLINE AVIATION, INC.

v.

**CITY OF SHREVEPORT
THROUGH THE
SHREVEPORT AIRPORT AUTHORITY**

DIRECTOR'S DETERMINATION
DOCKET NO. 16-07-05

Exhibit 1

INDEX OF ADMINISTRATIVE RECORD

Item 1 May 14, 2007, 14 CFR Part 16 formal complaint for Flightline Aviation, Inc., v. Shreveport Airport Authority, FAA Docket No. 16-07-05. Submission included the following exhibits:

exhibit 1	Checklist of Fixed Based Operators at Downtown Airport (Flightline Aviation audit conducted 8/16/06)
exhibit 2	September 9, 2004, Letter from Chairman, Shreveport Airport Authority to Director of Airports
exhibit 3	September 10, 2004, Electronic Message from Airport Manager to Director of Airports
exhibit 4	Personal Guaranty Agreement (signed but not dated)
exhibit 5	September 22, 2004, Electronic Message from Chairman, Shreveport Airport Authority to Director of Airports
exhibit 6	September 27, 2004, Electronic Message from Chairman, Shreveport Airport Authority to Director of Airports
exhibit 7	November 17, 2004, Letter from Director of Airports to Royal Air, Inc.
exhibit 8	December 1, 2004, Letter from Director of Airports to Royal Air, Inc.
exhibit 9	December 31, 2004, Letter from Airport Manager to Royal Air, Inc.
exhibit 10	June 8, 2005, Letter from Royal Air, Inc., to Airport Manager
exhibit 11	February 28, 2005, Letter from Royal Air, Inc., to Director of Airports
exhibit 12	April 8, 2005, Electronic Message from Risk Manager, City of Shreveport to Director of Airports
exhibit 13	June 22, 2005, Inter-Office Memorandum from Risk Manager, City of Shreveport to Shreveport Airport

exhibit 8	September 23, 2004, Application for Fixed Base Operation Fuel Permit
exhibit 9	Fixed Base Operator Agreement between City of Shreveport and the Shreveport Airport Authority and Flightline Aviation, Inc. (dated October 21, 2004)
exhibit 10	January 20, 2005, Shreveport Airport Authority meeting minutes
exhibit 11	Lease Agreement between Air One, Inc., and Flightline Aviation, Inc. (dated March 5, 2005)
exhibit 12	November 17, 2004, Letters from Director of Airports to Flightline Aviation, Inc., and Royal Air, Inc.
exhibit 13	December 1, 2004, Letters from Director of Airports to Flightline Aviation, Inc., and Royal Air, Inc.
exhibit 14	April 15, 2005, Letter from Airport Manager to Royal Air, Inc.
exhibit 15	April 15, 2005, Letter from Airport Manager to Flightline Aviation, Inc.
exhibit 16	June 23, 2005, Shreveport Airport Authority Meeting minutes
exhibit 17	June 23, 2005, Letter from Chairman, Shreveport Airport Authority Board, to Royal Air, Inc.
exhibit 18	[Petition for Temporary Restraining Order and Injunctive Relief.]
exhibit 19	Contractors Pollution Liability Declarations for Royal Air, Inc.
exhibit 20	October 24, 2005, Letter from Paralegal/Administrative Services, Shreveport Airport Authority, to Flightline Aviation, Inc.
exhibit 21	February 27, 2007, Letter from Airport Manager to Flightline Aviation, Inc.
exhibit 22	April 17, 2007, Letter from Airport Manager to Flightline Aviation, Inc.
exhibit 23	June 27, 2007, Letter from Airport Manager to Flightline Aviation, Inc.
exhibit 24	Employment Agreement between Flightline Aviation, Inc. and [Mike Green] (dated February 13, 2007)
exhibit 25	May 4, 2005, Letter from Royal Air, Inc., to Director of Airports and Airport Manager
exhibit 26	May 6, 2005, Letter from Airport Manager to Royal Air, Inc.

Item 6 August 2, 2007, Motion to Enroll and Motion for Continuance

Item 7 August 2, 2007, Amended Motion to Enroll and Motion for Continuance

Item 8 August 6, 2007, Notice of Extension of Time to File Reply

Item 9 August 23, 2007, Reply from Complainant for Flightline Aviation, Inc., v. Shreveport Airport Authority, FAA Docket No. 16-07-05. Submission included the following exhibits:

exhibit 1	June 23, 2005, Letter from Chairman, Shreveport Airport Authority Board to Royal Air, Inc.
exhibit 2	May 18, 2004, Electronic Message from Chairman, Shreveport Airport Authority to Director of Airports
exhibit 3	[Undated Electronic Message] from Director of Airports to Airport Manager
exhibit 4	Contractors Pollution Liability Declarations for Royal Air, Inc.
exhibit 5	May 4, 2005, Letter from Royal Air, Inc., to Director of Airports and Airport Manager & May 13, 2005, Letter from Attorney for Royal Air, Inc., to Airport Manager

Item 10 August 31, 2007, Rebuttal from Respondent for Flightline Aviation, Inc., v. Shreveport Airport Authority, FAA Docket No. 16-07-05. Submission included the following exhibit:

exhibit 27	Original Petition for Mandamus and Request to Have This Matter Assigned to Section B and Fixed for Hearing on September 17, 2001.

Item 11 December 19, 2007, Notice of Extension of Time for Flightline Aviation, Inc., v. Shreveport Airport Authority, FAA Docket No. 16-07-05.

Item 12 Corrective Action Plan for Royal Air, Inc. v. City of Shreveport through the Shreveport Airport Authority, FAA Docket No. 16-02-06.

exhibit 1	February 20, 2004, Letter from Director of Airports to FAA
exhibit 2	May 5, 2004, Letter from FAA to Director of Airports

FLIGHTLINE AVIATION, INC.

v.

CITY OF SHREVEPORT
THROUGH THE
SHREVEPORT AIRPORT AUTHORITY

DIRECTOR'S DETERMINATION
DOCKET NO. 16-07-05

Exhibit 2

RECORD OF FEDERAL ASSISTANCE SINCE 1982
FOR
SHREVEPORT DOWNTOWN AIRPORT

CERTIFICATE OF SERVICE

MAR 7 2008

I HEREBY CERTIFY that on _____ I caused to be placed in the United States mail (first class mail, postage paid) a true copy of this Director's Determination addressed to:

Walter F. Johnson, III
4300 Youree Drive
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Shreveport, LA 71105

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Director of Airports
City of Shreveport
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FAA Part 16 Airport Proceedings Docket

Airport Compliance Division, Office of Airport Safety and Standards, AAS-400

Southwest Region Airports Division, ASW-600

Wanda Williams
Office of Airport Safety and Standards